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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1709**

In re the Marriage of:
Pamela J. Ellingson, petitioner,
Appellant,

vs.

Alan G. Ellingson,
Respondent.

**Filed June 15, 2010
Reversed and remanded
Stauber, Judge**

Washington County District Court
File No. 82F303002565

James C. Selmer, Marc M. Berg, James C. Selmer & Associates, P.A., Minneapolis, Minnesota (for appellant)

Edward L. Winer, Jana Aune Deach, Moss & Barnett, Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this postdissolution appeal, appellant-wife argues that the district court (1) erred in calculating the parties' 2004 tax allocation, thereby resulting in an impermissible modification of the marital property division and (2) abused its discretion by refusing to

vacate the second amended judgment and decree and remove the requirement that the parties file amended joint tax returns for 2004. Because the district court erred in calculating the parties' 2004 tax allocation, we reverse and remand.

FACTS

Appellant Pamela Ellingson and respondent Alan Ellingson were married in 1991. Throughout the marriage, the parties received salaries from Al's Cabinets, Inc., a company started by respondent prior to the parties' marriage. On October 24, 2005, the marriage was dissolved. Pursuant to the judgment and decree dissolving the marriage, the parties' marital estate was to be divided equally. Because the majority of the marital estate was in respondent's possession at the time of dissolution, respondent was ordered to pay a \$3,211,078 "equalizer" payment primarily to compensate appellant for the non-liquid cabinet business awarded to respondent. The decree further ordered the parties to file income tax returns as "married filed jointly" (MFJ) for 2004 and 2005. The parties were to "split equally any income tax refunds or equally pay any tax due for those years."

After respondent moved for amended findings, the district court issued its order of April 19, 2006, reducing the equalizer payment to \$3,113,079 and establishing an equalizer payment schedule which required respondent to pay appellant \$500,000 plus interest every six months until the equalizer amount was satisfied. The amended findings also vacated the requirement that the parties file joint tax returns for 2005, "as that was prohibited by IRS rules because the marriage was dissolved in 2005." But the court further concluded that "[b]ecause the [business] valuation date was late in the year, October 31, 2004, the court judged it equitable that the parties share equally in any refund

or deficit for that year.” Consequently, in its amended judgment dated April 19, 2006, the district court amended the 2004 income tax filing finding to state: “The parties shall file joint income tax returns for the year 2004 and shall split equally any income tax refunds or equally pay any tax due for that year.”

Respondent filed a notice of appeal in June 2006. In that appeal, respondent raised valuation and division issues, but also requesting review of “[w]hether the District Court erred in ordering the parties’ to file joint income tax returns for 2004.” While the 2006 appeal was pending, appellant filed a contempt motion in district court for respondent’s failure to cooperate with the filing of the 2004 joint tax returns as required.¹ In response, respondent requested a stay of the MFJ requirement pending his appeal, which the district court granted. This court subsequently issued its decision affirming the district court in all respects. *Ellingson v. Ellingson*, No. A06-1221 (Minn. App. July 3, 2007), *review denied* (Minn. Sept. 18, 2007).

After resolution of the appeal, respondent moved in December 2007, to again modify the payment schedule on the property settlement monies owed to appellant. The district court issued an order on December 19, 2007, partially granting respondent’s request. The district court also scheduled a status hearing for mid-2008 to review respondent’s obligation with respect to the June 2008 equalizer payment.

In light of this court’s opinion affirming the district court’s requiring the filing of 2004 joint income tax returns, the parties took action to file amended MFJ income tax

¹ Prior to the entry of the October 24, 2005 Judgment and Decree, respondent filed his income tax returns for 2004 as “married filed separately” (MFS), which forced appellant to file MFS as well.

returns. Because the parties could not agree on the amount of the tax allocation, appellant filed another motion seeking to hold respondent in contempt for refusing to cooperate with the filing of the amended MFJ returns. At the motion hearing held on April 25, 2008, appellant argued that based upon her calculations, respondent would owe her \$23,368 to equalize the payment of taxes and the receipt of refunds once the parties changed their filing status to MFJ. In contrast, respondent claimed that based on his calculations, appellant owed him \$215,317 to equalize the allocation of the taxes.

The district court ruled from the bench, concluding that the amended order was unambiguous, that it meant a “50/50” split between the parties, and that the tax allocation results in “a huge burden” to appellant. The court subsequently issued its written order on June 4, 2008, stating that “[a]fter consideration of the income taxes each party paid and after consideration of the tax refunds each party received for the 2004 tax year, [appellant] owes Respondent \$215,317 as and for her one-half share of the total 2004 Federal and State income tax liability.” The court further stated that: “[Appellant] contends that this result somehow alters the marital property distribution. Respondent disagrees. The court disagrees.” Finally, the court ordered the parties to file their amended 2004 MFJ returns by June 6, 2008.

On June 27, 2008, a status conference was held to discuss respondent’s December 2007 request to modify the equalizer payment schedule. The district court took the matter under advisement, and issued an order on September 18, 2008, rejecting respondent’s request to eliminate all remaining property settlement equalizer payments. But the court granted respondent’s request to modify the equalizer payment schedule.

The court also found that based on the June 4, 2008 order, appellant owes respondent \$215,317 “for her share of the total 2004 tax liability.” Thus, the court ordered that \$215,317 be deducted from the remaining equalizer.

While the matter was under advisement, the parties filed amended MFJ income tax returns for 2004. A few weeks later, on August 26, 2008, the IRS issued a notice disallowing the parties’ amended MFJ return as untimely. The notice explained that the deadline for filing amended returns is three years from the original due date, “determined without regard to any extensions.” Thus, the deadline for filing the amended return with the IRS would have been April 15, 2008.

On September 25, 2008, respondent filed an appeal with the IRS regarding the rejection of the amended 2004 MFJ return. While respondent’s appeal was pending, appellant filed a motion seeking to vacate or modify the second amended judgment and decree requiring appellant to pay respondent the \$215,317 for her share of the 2004 tax liability. Appellant’s motion also sought to vacate any and all previous orders that required the parties to file joint income tax returns for 2004. The district court subsequently issued its order stating “[b]ecause the IRS has not made a final determination on the status of the amended joint return, the issue before this court is premature and not ripe for decision.”

After the district court granted appellant’s request under Minn. R. Gen. Pract. 115.11, for reconsideration of her motion to vacate or modify the portion of the judgment and decree concerning the 2004 tax allocation, respondent was notified by the IRS that his appeal had been denied. Shortly thereafter, on April 17, 2009, a telephone conference

was held on appellant's request for reconsideration of the district court's March 20, 2009 order. During the conference, appellant referenced a proposal allegedly made by the district court at a prior hearing, that the parties could "leave things where they [were at the time of that hearing]." Appellant claimed that under this proposal, the parties would leave the MFS returns as is, and there would be "no deduction from the remaining equalizer payment; that is, the \$215,317 amount goes back into the equalizer balance, and the people leave their tax returns where they are." The district court denied that such a proposal was ever made, and directed the parties to file simultaneous submissions with the court addressing each party's position regarding the allocation of the 2004 tax liability.

The parties submitted their separate position statements and rebuttals pursuant to the district court's directive. Respondent argued that an accurate allocation of the 2004 tax liability resulted in appellant owing respondent \$215,275. In contrast, appellant argued that a true sharing of the funds would result in respondent owing appellant \$87,299. Appellant further claimed that adopting respondent's position would effectively alter the marital property division because respondent's position was premised upon the notion that the majority of the tax payments for 2004 were made with "his money."

On July 28, 2009, the district court issued its order reiterating that the parties were required to "split equally any income tax refunds or equally pay any tax due" for 2004. The district court rejected appellant's calculation method, finding that appellant's "proposed calculation method is flawed because it is contrary to the Court's previous Findings and Orders by seeking to treat each party's tax withholdings and refunds

received differently based on whether payments were made before or after April 15, 2005.” The court then adopted respondent’s analysis, finding that the analysis was consistent with the prior orders requiring the parties to equally share the 2004 tax liability. Finally, the court concluded that appellant’s \$215,275 share of the tax liability should be offset against respondent’s remaining property settlement payments. The court found that “[s]aid offset does not change the final property settlement.” This appeal followed.

D E C I S I O N

I.

All divisions of real and personal property in a marital dissolution are final, and may be revoked or modified only where the district court finds that conditions justify reopening a judgment under Minn. Stat. § 518.145, subd. 2 (2008). Minn. Stat. § 518A.39, subd. 2(f) (2008). “While a [district] court may not modify a final property division, it may issue orders to implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties’ substantive rights.” *Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. App. 1999). This court will not disturb an appropriate order to implement or enforce terms of a decree absent a clear abuse of discretion. *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991).

Appellant argues that the district court impermissibly modified the marital property division when it offset appellant’s calculated tax liability against respondent’s remaining property settlement payment. Appellant contends that the impermissible

modification results from the district court's erroneous calculation of the parties' 2004 tax allocation.

A district court's apportionment of a tax liability is subject to an abuse-of-discretion review. *Ruud v. Ruud*, 372 N.W.2d 851, 855 (Minn. App. 1985), *rev'd. in part on other grounds*, 380 N.W.2d 765, 766 (Minn. 1986). Here, the district court allocated the tax liability based on the formula provided by respondent. Under this formula, the \$148,081 respondent received in refunds was subtracted from the \$629,395 in gross taxes paid by respondent, resulting in a total net tax liability paid by respondent for 2004 of \$481,314. The formula also subtracted the \$15,071 appellant received in refunds for 2004, from the \$65,833 she paid in gross taxes, for a total net tax liability paid by appellant for 2004 of \$50,762. The district court then subtracted the \$50,762 in net taxes paid by appellant from the \$481,314 in net taxes paid by respondent, for a total of \$430,552. Using this figure, the court found that respondent paid \$430,552 more in taxes than appellant. Thus, to equalize the amount of tax liability, the court divided the \$430,552 in half, and ordered appellant to pay respondent \$215,276 to compensate respondent for her half of the tax liability for 2004.

Appellant argues that the district court's calculation of the tax liability is erroneous because it treats the amount of taxes paid by respondent as taxes paid from *his* non-marital money, and refunds he received as his non-marital refunds. Appellant argues that this reasoning is erroneous because the taxes paid for 2004 were paid from *marital property*.

We agree. In ordering appellant to pay respondent \$215,276 for her share of the tax liability, it is clear that the district court intended to follow the language in the amended judgment and decree ordering the parties to “split equally income tax refunds or equally pay any tax due for [2004].” But in attempting to allocate the 2004 tax liability equally, the district court miscalculated the tax liability for that year when it adopted respondent’s formula for computing the 2004 tax liability. The record reflects that the parties’ marriage was dissolved by judgment and decree on October 24, 2005. Before that date, the parties were still married. Thus, the taxes for 2004, paid before October 24, 2005, were paid from marital property, and the refunds received from the filing of the 2004 tax returns were marital property.

The record reflects that for 2004, respondent was paid a salary from the cabinet business of \$312,000, from which \$99,827 was withheld for taxes. Appellant was also paid a salary from the cabinet business in 2004. Her salary totaled \$55,874, from which \$8,477 was withheld for taxes. Respondent also paid appellant \$120,000 in temporary spousal maintenance in 2004, from which no taxes were withheld.

In January 2005, the cabinet business paid respondent a bonus of \$675,388 for 2004. From the bonus check, \$363,800 was withheld for taxes. Respondent also made an advance payment of \$75,000 to the IRS in January 2005, and another \$75,000 payment in April 2005. These advances totaled \$150,000, and were made toward the parties’ 2004 marital tax liability.

On October 15, 2005, appellant filed her 2004 MFS return. Because nothing had been withheld from the temporary spousal maintenance payments made to her by

respondent, appellant was forced to pay \$57,356 in taxes. Two years later, in December 2007, respondent paid an additional \$15,768 in taxes to correct an error dealing with his 2004 taxable income from one of his businesses. Consequently, respondent's income tax payments for 2004 totaled \$629,395 and appellant's total taxes paid for 2004 was \$65,833. In addition to their total taxes paid, respondent received a 2004 refund in the amount of \$148,081 and appellant received a 2004 refund in the amount of \$15,701.

Except for the \$15,768 respondent paid in 2007 for the parties' 2004 taxes, all of the taxes paid by the parties for 2004 were paid before October 24, 2005. Therefore, these taxes were paid with marital funds, and both parties should be credited equally for the amount paid. Similarly, the amended judgment and decree orders the parties to share equally any tax refunds for 2004. Because both parties received refunds for 2004, both parties are entitled to a one-half share of the other's refunds.

However, as appellant points out, the district court's order erroneously treats the taxes paid by the parties for 2004, and the refunds received by the parties for 2004 as non-marital property. This mistake resulted in an erroneous calculation of the parties' tax allocation, which in turn led to an unequal division of the marital estate. Therefore, we reverse and remand the matter to the district court for a recalculation of the parties' tax liability for 2004.

II.

Appellant also contends that the district court abused its discretion by refusing to vacate the second amended judgment and decree and remove the requirement that the parties file amended joint tax returns. Appellant argues that because the IRS would not

allow the parties to amend their federal income tax returns for 2004 from MFS to MFJ, it was impossible to enforce the terms of the judgment and decree that directed the parties to file MFJ tax returns. Thus, appellant argues that the IRS's rejection of the MJF tax returns obviated the 2004 tax allocation, and the district court should have allowed the parties to go forward with the "as is" option appellant claims the district court proposed at a prior hearing.

This court reviews the district court's decision on a motion to reopen a judgment under Minn. Stat. § 518.145, subd. 2, for an abuse of discretion and its findings for clear error. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). A judgment may be reopened upon a showing of mistake, surprise, inadvertence, excusable neglect, newly discovered evidence, or fraud, if the motion is made within a reasonable time and no later than one year from the entry of judgment. Minn. Stat. § 518.145, subd. 2(1), (2), (3) (2008). A judgment may also be reopened if "the judgment and decree or order is void." *Id.*, subd. 2(4) (2008). Finally, a judgment may be reopened if it is no longer equitable that the judgment be applied prospectively, but in these latter cases, the only limit on making the motion is that it be made "within a reasonable time." *Id.*, subd. 2(5) (2008). The party seeking relief from a judgment and decree bears the burden of proof. *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

Here, appellant is unable to show that any of the reasons to reopen a judgment set forth in Minn. Stat. § 518.145, subd. 2, are applicable. There was no "mistake" made by the district court when it ordered the parties to file joint tax returns for 2004. The

mandate was properly made to further the requirement that the parties share in the tax refund or liability for 2004. The IRS's untimely rejection of their joint-tax return was not the result of a "mistake" made by the district court. Rather, the rejection of the tax return was the result of the ongoing litigation in this matter and the parties' failure to recognize the appropriate filing deadlines. The order can still be equitably applied because, even though the parties can no longer file joint tax returns for 2004, the tax liability for 2004 can still be equally allocated, which was the intent of the order. Moreover, there is no support in the record for appellant's argument that the district court gave the parties the choice to leave the tax allocation "as is" and decline to allocate the 2004 tax liability equally. As the district court noted, the "as is" reference contemplated by appellant was merely a "hypothetical" question asked by the district court during an earlier hearing on the tax allocation issue. The district court's position that the question was a "hypothetical" is supported by the district court premising the question with "[i]f I say." Therefore, the district court did not abuse its discretion in refusing to vacate the amended judgment and decree.

Appellant further argues that the district court abused its discretion in interpreting its own order to require the parties to "split equally any income tax refunds or equally pay any tax due" for 2004. But the order is unambiguous. It specifically requires the parties to split any tax refunds received for 2004, or split equally any tax due in 2004.

Moreover, the district court repeatedly clarified its intent that the parties equally share in any tax refunds or tax liability for 2004. Accordingly, the district court did not abuse its discretion in interpreting its own order.

Reversed and remanded.